PRIVY COUNCIL REPORT

H.L. WEE v. THE LAW SOCIETY OF SINGAPORE

[P.C. (Lord Diplock, Lord Brandon of Oakbrook and Sir John Megaw) July 12 & 13, 1982]
[Privy Council Appeal No. 44 of 1981]

Legal Profession – Advocate and Solicitor – Grossly improper conduct – Delay in reporting employee's criminal misappropriation – Restitution as motive – Concurrent findings of fact – Penalty – Legal Profession Act (Cap. 217), ss. 84, 94 & 98.

This was an appeal from the order of the High Court in Singapore that the appellant, an advocate and solicitor of Singapore, be suspended from practice for two years – See [1981] 2 M.L.J. 215.

The appellant employed a number of solicitors as assistants in his practice. The appellant discovered by March 1976 that one of these assistants had misappropriated a large amount of money from clients' accounts. The appellant did not disclose the fact of the defalcations by the assistant to the Law Society or the police until some 13 or 14 months later, during the course of which he endeavoured to obtain restitution from the assistant. The appellant was charged before a Disciplinary Committee with grossly improper conduct in the discharge of his professional duty, the charge being based on his failure to report earlier the criminal breach of trust committed by the assistant. The Disciplinary Committee found that a cause of sufficient gravity existed for disciplinary action and the finding was brought before the High Court by the Law Society. The appellant gave evidence as to his motives to show that his failure to report was a mere error of judgment but the Disciplinary Committee found that the dominant motive for his non-disclosure was his own financial protection, to ensure, if possible, that he himself was not out of pocket but got back full restitution for all that the firm had lost or might be liable for. The High Court also rejected the appellant's submissions and found the appellant guilty of grossly improper conduct in the discharge of his professional duty and ordered that he be suspended from practice for two years. The appellant appealed.

Held: (1) in this case there were concurrent findings of fact with which it is the established and invariable practice of the Privy Council not to interfere, particularly as the finding was dependent upon the credibility of the oral evidence of the appellant as a witness;

(2) the High Court with its familiarity with the conditions which obtain in the legal profession in Singapore is in a much better position than the Privy Council to assess the appropriate penalty for grossly improper conduct. The Privy Council would hesitate long before interfering with the High Court's assessment and there was no sufficiently strong ground to entitle it to do so in this case.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

C. Ross Munroe Q.C. (*H. Page* with him) for the appellant.

J. Grimberg (*George Lim* with him) for the respondent.

Lord Diplock (delivering oral judgment of the Board): This is an appeal against an order of the High Court in Singapore of August 27, 1981, under section 84(1) of the Legal Profession Act, that the appellant, an advocate and solicitor of Singapore, be suspended from practice for two years.

The appellant was in practice alone under the firm name of Braddell Brothers. He employed a number of solicitors as assistants in that practice. The senior of these assistants was one Santhiran who, as the appellant had discovered by March 1976, had misappropriated a large amount of money from clients' accounts. The appellant did not disclose the fact of Santhiran's defalcations to the Law Society or the police until some 13 or 14 months later, during the course of which he endeavoured, with considerable but not complete success, to obtain restitution from Santhiran of the monies belonging to clients and to the firm itself that had been misappropriated.

The appellant was charged before a Disciplinary Committee with grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2) of the Legal Profession Act, the charge being based upon his failure to report earlier the criminal breaches of trust committed by Santhiran. His defence in substance was that his failure to report was a mere error of judgment; he was actuated by a desire to obtain Santhiran's co-operation so that it would be possible to allocate as between individual clients the total amount of money which Santhiran admitted he had misappropriated and of most of which he had by March 1976 already made restitution. It was submitted to the Disciplinary Committee that, in determining whether what the appellant did was grossly improper conduct in the course of his professional duty, they were not entitled either to consider whether the appellant's motives in avoiding disclosure of Santhiran's criminal breaches of trust were as exclusively altruistic as he claimed; nor, it was also submitted, were they entitled to take into account the fact that he retained Santhiran in his employment until December 1976, although unpaid, allowed him to conduct business including court business on behalf of clients, and did nothing until April 1977 to prevent him there-

after from carrying on practice on his own account as a solicitor.

The Disciplinary Committee rejected these submissions which, despite counsel's sustained and ingenious reasoning to the contrary, in their Lordship's view remain quite unarguable. The appellant gave evidence as to his motives; he was cross-examined and was disbelieved by the Committee. They found that the dominant motive for his non-disclosure was his own financial protection, to ensure, if possible, that he himself was not out of pocket but got back full restitution for all that the firm had lost or might be liable for as a result of Santhiran's dishonesty. This was a finding of fact. The Committee's reasons for reaching it are set out in meticulous and convincing detail in their report. In the result they found that cause of sufficient gravity existed for disciplinary action under section 84 of the Act.

This finding was brought before the High Court by the Law Society under sections 94(1) and 98 of the Act. The appellant's submissions, which their Lordships have already stated they regard as quite unarguable, were repeated to the High Court and rejected by that Court.

The Court was also pressed with an argument on behalf of the appellant that the evidence before the Disciplinary Committee did not justify the conclusion they had reached as to the appellant's motives for his long delay in disclosing Santhiran's defalcations. The High Court, in a careful judgment, considered and rejected this argument: so on this matter the appellant is faced with concurrent findings of fact with which it is the well-established and invariable practice of this Board not to interfere, particularly as the finding was dependent upon the credibility of the oral evidence of the appellant as a witness.

Finally, it was submitted that the penalty of two years' suspension from practice imposed by the High Court on the appellant was too severe. The High Court with its familiarity with the conditions which obtain in the legal profession in Singapore, is in a much better position than their Lordships to assess the appropriate penalty for grossly improper conduct. Their Lordships would hesitate long before interfering with the High Court's assessment. They see no sufficiently strong ground to entitle them to do so in this case.

This appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Kingsford Dorman; Linklaters & Paines.*

SINGAPORE REPORTS

LIM MENG HUAT v. PUBLIC PROSECUTOR

[C.A. (Wee Chong Jin C.J., Sinnathuray & Chua JJ.) April 27, 1982]

[Singapore – Criminal Appeal No. 3 of 1980]

Criminal Law & Procedure – Charge of causing death – Consultant surgeon recalled twice as witness – Whether breach of Criminal Procedure Code (Cap. 113) (1980 Reprint), s. 187(3) – Penal Code (Cap. 103), s. 300(c).

The appellant in this case was convicted on a charge of murder of one Ng. The trial Judges found that the appellant had intentionally inflicted the stab wound on the deceased and that the stab wound was sufficient in the ordinary course of nature to cause the death of the deceased. They found the appellant guilty of murder under paragraph (c) of s. 300 of the Penal Code (Cap. 103). In his Petition of Appeal, the appellant challenged the said finding of the trial Judges on the ground that "It appears to have been based on the evidence of Dr. Chng Hong Chee, an expert witness called by the prosecution . . . not in compliance with the mandatory provisions of section 187(3) of the Reprint of the Criminal Procedure Code . . ." and was therefore "improperly admitted, unlawful and gravely prejudicial" to the appellant.

The facts revealed that Dr. Chng was the consultant surgeon at the hospital. He was not a witness at the Preliminary Inquiry. Two days before the trial, on February 2, 1980, the learned Deputy Public Prosecutor gave notice under s. 187(3) of the Criminal Procedure Code of the intention to call Dr. Chng. On February 7, 1980 at the commencement of the continued hearing, the Prosecution sought to recall Dr. Chng to be present in court so that he may further assist the court.

Held, dismissing the appeal: (1) there is nothing in section 187(3) of the Criminal Procedure Code that requires that in such a circumstance a fresh notice has to be given to the accused or his advocate to recall a witness who has already given evidence. To permit a witness to be recalled and the admission of his evidence are matters eminently for the trial Judges;

(2) the trial Judges in this case had relied not on the evidence of Dr. Chng but on the expert evidence of the forensic pathologist, that the fatal stab wound inflicted by the appellant on the deceased was sufficient in the ordinary course of nature to cause his death. So, on the assumption that the evidence given by Dr. Chng on his recall should not have been admitted at the trial, the court was satisfied that it had not occasioned a failure of justice.

Cases referred to:–

(1) *Public Prosecutor* v. *Oie Hee Koi* [1968] A.C. 829; [1968] 1 M.L.J. 148.
(2) *R.* v. *Warn* [1970] A.C. 394.
(3) *Chong Peng* v. *Public Prosecutor* [1954] M.L.J. 39.
(4) *Wong Kok Keong* v. *R.* [1955] M.L.J. 13.